



DOCKET FILE COPY ORIGINAL

STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 753-6423 • TTY (360) 586-8203

January 23, 1998

Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

RE: CC Docket No. 96-45 (Report to Congress), Comments of the Washington Utilities and Transportation Commission in Response to DA 98-2.

Dear Ms. Salas:

Pursuant to the Federal Communications Commission's Notice DA 98-2 (Report to Congress) in Docket 96-45, enclosed for filing is an original and four copies of the Comments of the Washington Utilities and Transportation Commission. We are also filing copies pursuant to the Notice with Sheryl Todd in the Universal Service Branch, and with International Transcription Services.

Please contact Tom Wilson at (360) 664-1293, Internet: tomw@wutc.wa.gov if you have any questions about this filing.

Sincerely,

Paul Curl
Acting Secretary

Enclosure

No. of Copies rec'd
List A B C D E

024



DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 26 1998
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

CC Docket No. 96-45
[DA 98-2]

Federal-State Joint Board on
Universal Service

(Report to Congress)

COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FOR THE REPORT TO CONGRESS ON UNIVERSAL SERVICE
JANUARY 23, 1998

In response to the Federal Communications Commission's (FCC) Common Carrier Bureau January 5, 1998, Public Notice DA 98-2, the Washington Utilities and Transportation Commission (WUTC) respectfully submits the following comments concerning the FCC's report to Congress on universal service.

Summary:

- 1) Federal and State regulators must work together cooperatively and in coordination to implement universal service reform;
- 2) Splitting responsibility for universal service 25 percent to the interstate jurisdiction, and 75 percent to the state jurisdiction puts too much upward pressure on rates for basic service in high cost states. We advocate a sharing formula that directs more support from the interstate jurisdiction to high cost states.

Introduction

The public notice states that the report to Congress is to provide a detailed description of the extent to which the FCC's interpretations in several listed areas concerning universal service are consistent with the Telecommunications Act of 1996. Comments are requested on these issues. In reviewing the issues raised, and considering the diverse stakeholder groups that will be commenting, an over-arching theme that needs to be recognized is that for universal service reform to result in mutual gains for every stakeholder group, there has to be an ongoing

process that is cooperative and coordinated between jurisdictions and that allows continuing input and evolution. In that regard, the WUTC commends the FCC for seeking comment on these issues, and urges the FCC to not only incorporate the knowledge gained from this particular exercise in its report to Congress, but to also take the comments it will receive under consideration in charting its responses to the appeals and challenges to its universal service order, and in formulating future policy on the matter.

Please find attached a copy of our recent report to the Washington Legislature, "Preserving and Advancing Universal Service in a Competitive Environment." We are incorporating that report by reference into our comments here because our report discusses many of the issues raised in the FCC's Notice.

The issues raised in this notice serve to highlight several features of universal service reform:

- Emerging competition implies that a larger funding base may be appropriate, but the process of determining exactly where the funding support comes from will require application of definitions that keep pace with rapidly advancing technology and changing demand.
- Universal service reform is a regulatory tool to insure that consumers realize the benefits of competition, while at the same time providing comparability between low-cost urban areas and high cost, rural and insular areas of the country.

- The delivery of universal service support has to be deaveraged to meet the goals of enabling competition and comparability.
- However, the funding for universal service must be constructed upon national averages, because available forward-looking cost estimates show that high-cost states will be unable to generate internal support for universal service and at the same time maintain affordable rates for basic services without substantial support from outside those states.
- The WUTC firmly believes that the complexity of universal service reform (taken together with emerging competition, and access reform) absolutely requires not only local input to address specific conditions and issues at the State level, it also requires that States must coordinate nationally, and in particular with the FCC.

Discussion

- Emerging competition implies that a larger funding base may be appropriate, but the process of determining exactly where the funding support comes from will require application of definitions that keep pace with rapidly advancing technology and changing demand.

One measure of whether the advent of competition is a success for consumers is if they are better off. If emerging competition means that some customers are able to avoid the universal service support mechanism by choosing a provider that does not have to contribute, then the universal service support mechanism should be reformed so that it will continue to be

adequately funded. One way to do that is to include the new competitors in the funding mechanism by revising the definition of who has to contribute. In a sense, this makes the funding base larger, intending that the funding mechanism should be part of a non-bypassable system. On the other hand, new technology constantly leads to new developments in the competitive marketplace, and a delicate balance has to be found between a definition of who has to contribute to universal service support, and who gets to compete for that support to provide basic service. Issues (1) - (4), listed in the notice, deal with these definitional issues, and our comments below in response to that issue provide specific examples where we discuss consistency with the 1996 Act.

- Universal service reform is a regulatory tool to insure that consumers realize the benefits of competition, while at the same time providing comparability between low-cost urban areas and high cost, rural and insular areas of the country.

Application of the definition of terms such as "telecommunications carrier" - particularly with regard to new hybrid services, and the growing role of the Internet on the Information Superhighway, - is just one part of the overall challenge. It is important to remember that the financial issues of structuring universal service support are mechanical details. The principles of universal service set forth in the Act are the reason for reforming universal service, not the other way around. It is all too easy to get caught up in the moment and yield to the short-term interests of the few, but it is important to balance those with the long-term

interests of the many. Making sure that consumers realize the benefits of competition, and supporting comparability between areas of the country are not necessarily at odds with each other. But given the magnitude of the changes facing the industry, the FCC must take bold steps to truly reform universal service. Given the changes taking place in technology, and demand, it may well be that the FCC will have to approach the issue in ways that haven't been done before. Service providers heretofore not viewed as "telecommunications carriers" should probably be included in the term when new providers begin to fit the definition if consumers are truly going to receive the benefits of competition. For example, this means that a wireless cellular or PCS company may be an Eligible Telecommunications Carrier, but does it also mean that an Internet access provider is too? Whatever the FCC decides on issues over which it may have jurisdiction, it is important to keep in mind the goals of the Act. The application of these terms consistent with the Act may or may not result in changes to who has to pay in, and who gets to draw out, but regardless, everyone should be included in the process of realizing those goals. Issues (1) - (4), listed in the notice, also raise discussion in our comments below on those issues that are related to this concept.

- The delivery of universal service support has to be deaveraged to meet the goals of enabling competition and comparability.

As Chairman Kennard mentioned in his comments before the Organization for the Protection and Advancement of Small Telephone Companies in Fort Lauderdale, Florida, on

January 12, 1998, it does not cost the same to provide service downtown as it does outside the town limits. We agree that ultimately, regulation must begin to reflect that reality by deaveraging the support delivery mechanism.

- However, the funding for universal service must be constructed upon national averages, because available forward-looking cost estimates show that high-cost states will be unable to generate internal support for universal service and at the same time maintain affordable rates for basic services without substantial support from outside the state.

We submit that because costs vary along urban/rural lines and this implies a deaveraged support delivery (payment) system does not mean that the mechanism to generate funding should also be deaveraged. However, the FCC's current proposal to split the universal service burden 25 percent to the Federal jurisdiction, and 75 percent to the State jurisdiction accomplishes just that - it deaverages the collection of support, loading the largest requirement for revenue generation on the highest cost states. If those states also lack large populations from which to draw funding support, then unaffordably high rates may be the outcome. This relates directly to Issue (5) raised in the notice, and we discuss the matter below in the section of our comments where we respond directly to the specific questions.

Comments on the issues listed in the notice

- (1) *The definitions of "information service," "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," and "telephone exchange service" in section 3 of the Act, and the impact of the interpretation of those definitions on the provision of universal service to consumers in all areas of the Nation.*

Currently the Internet, Internet service providers, Internet backbone companies, and Internet access providers are not considered "telecommunications carriers" required to contribute to funding of universal service. However, future user applications and service offerings may blur the distinction. Currently wireless service providers are not subject to regulation by the WUTC, although they can be Eligible Telecommunications Carriers, and they are required to contribute to universal service (although Washington State Law does not currently provide the WUTC with the authority to implement a universal service program into which wireless providers must pay, the WUTC has requested enabling legislation of that nature that is pending before the Washington State Legislature). Cable television service providers are not currently viewed as providing "telecommunications service" although they might be seen that way with the advent of two-way open systems for telecommunications riding on the "cable system." Many municipalities may be considering becoming a "telecommunications carrier," but in Washington, municipalities are exempt from the WUTC's oversight. Entry by electric utilities may be near. All of these issues will become critically important with convergence of these

industries, and the entry on the scene of new players. The WUTC's only comment at this time is to take note of the blurring lines of distinction, and to recognize the need for a cooperative and coordinated approach between states, and between states and the Federal jurisdiction. These issues can easily become difficult unless a collaborative approach is taken, with a great deal of dialogue and information sharing.

The term "telephone exchange service" is a term that was defined long ago by Incumbent LECs (ILECs), and should not be interpreted to mean the same thing as "local usage," which is a term for one of the nine components of "basic service." We believe that "local usage" should provide for local calling to a community of interest which may not necessarily be the same thing as the geographic boundaries of "telephone exchange service."

The FCC should be cognizant of the fact that application of these terms will eventually have an effect on the economics of the traditional telecommunications industry as well as on the economics of the other industries emerging today like the Internet. These effects should not result in artificial biases that shift the economics of these industries without careful thought. The WUTC does not have any comment at this time about whether the FCC's interpretations to date are either consistent or inconsistent with the Telecommunications Act of 1996, but respectfully submits that the most effective team will be the states and the FCC working together in collaboration to address these changes as they occur in an evolving manner, and in an open and inclusive process.

Generally, generic definitions which are based on the functionality of the term being defined, rather than on an organizational approach are what is called for. Thus, it won't matter whether transmission occurs through radio waves, over copper, fiber, or other media, what will matter is that "telecommunications" and "telecommunications service" are being provided.

- (2) *The application of those definitions to mixed or hybrid services and the impact of such application on universal service, and the consistency of the Commission's application of those definitions, including with respect to Internet access for educational providers, libraries, and rural health care providers under section 254(h) of the Act.*

The WUTC has no specific comment at this time.

- (3) *Who is required to contribute to universal service under section 254(d) of the Act and related existing Federal universal service support mechanisms, and of any exemption of providers or exclusion of any service that includes telecommunications from such requirement or support mechanisms.*

The WUTC supports the FCC's decisions to date regarding who is required to contribute to universal service.

- (4) *Who is eligible under sections 254(e), 254(h)(1), and 254(h)(2) of the Act to receive specific Federal universal service support for the provision of universal service, and the consistency with which the Commission has interpreted each of those provisions of section 254.*

In this regard, the FCC may have acted in an overly prescriptive manner.

Public/private partnerships and consortia are limited from receiving universal service support.

Yet, demand aggregation promises to be one of the more useful tools for economic development strategies using telecommunications in rural and insular areas. Across the country at a state-by-state, and even more local level, efforts are being undertaken at the grass-roots level to develop these sorts of ideas and opportunities. This is yet another example of why it is important to have a collaborative relationship between the states and the FCC to insure the sharing of information about these sorts of issues so that national policy can accommodate such developments in a manner consistent with the Telecommunications Act of 1996.

- (5) *The Commission's decisions regarding the percentage of universal service support provided by Federal mechanisms and the revenue base from which such support is derived.*

Notwithstanding the pending status of the cost proxy models, figures based upon estimates using recent versions of the models show that some states will face unaffordable rate increases if they are to meet their 75 percent share of the universal service burden. Table 1

below contains the data supporting this assertion. What Table 1 shows is the amount per line, per month which each state would have to generate to cover its 75 percent share of the estimated forward-looking economic cost of providing basic universal service that is greater than the national average forward-looking economic cost of \$28.12 per line per month. The cost estimates are based on an average of Hatfield Version 4.0 and BCPM2 at default inputs.¹

Table 1	\$/line per mo.	Annual Total (\$ millions)
Alabama	6.98	188
Arizona	0.56	16
Arkansas	10.59	161
California		
Colorado	1.16	33
Connecticut		
Delaware		
District of Columbia		
Florida		
Georgia	2.27	116
Hawaii		
Idaho	9.92	75
Illinois		
Indiana	1.54	60
Iowa	7.50	138
Kansas	6.87	121
Kentucky	7.31	171
Louisiana	2.36	65
Maine		
Maryland		
Massachusetts		
Michigan		
Minnesota	3.28	107
Mississippi	10.26	153
Missouri	3.37	123

¹ This data was provided courtesy of Joel Shifman of the Maine Public Utilities Commission, and Peter Bluhm of the Vermont Public Service Board.

Montana	19.25	111
Nebraska	8.98	103
Nevada		
New Hampshire	2.62	23
New Jersey		
New Mexico	8.57	86
New York		
North Carolina	3.47	176
North Dakota	18.34	91
Ohio		
Oklahoma	6.52	140
Oregon	3.52	78
Pennsylvania		
Rhode Island		
South Carolina	4.62	109
South Dakota	18.59	93
Tennessee	3.64	134
Texas	0.29	37
Utah	1.25	15
Vermont	7.89	35
Virginia	0.37	18
Washington		
West Virginia	11.17	123
Wisconsin	2.29	84
Wyoming	19.41	64
Total		3,121

The WUTC supports the National Association of Regulatory Utility

Commissioners (NARUC) resolution in opposition to the FCC's 25 percent - 75 percent split proposal. The FCC should reconsider the formula in favor of a more targeted contribution from the interstate side to high cost states. This is necessary to meet the principle of comparability and sufficiency.

Conclusion

The WUTC firmly believes that the complexity of universal service reform (taken together with emerging competition, and access reform) absolutely requires not only local input to address specific conditions and issues at the State level, it also requires that States must coordinate nationally, and also, especially with the FCC. In his speech to OPASTCO on January 12, 1998, Chairman Kennard expressed his hope to hold a series of field hearings to foster dialogue on "Keeping America Connected," and in that regard, we hereby extend an invitation to him to consider Washington State in his plans.

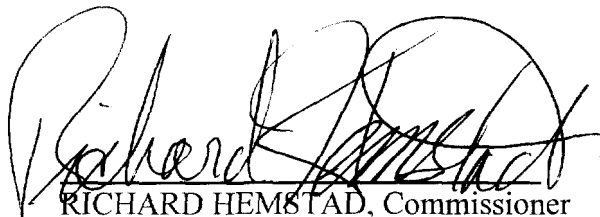
DATED this 23rd day of January, 1998, at Olympia, Washington.



ANNE LEVINSON, Chair

Washington Utilities and Transportation

Commission



RICHARD HEMSTAD, Commissioner

Washington Utilities and Transportation

Commission



WILLIAM R. GILLIS, Commissioner

Washington Utilities and Transportation

Commission

Attachment - "Preserving and Advancing Universal Service in a Competitive Environment," a report to the Washington State Legislature, prepared by the Washington Utilities and Transportation Commission, January, 1998.

Preserving and Advancing Universal Service

In a

Competitive Environment



A Report

to the

WASHINGTON STATE LEGISLATURE

Prepared by the

Washington Utilities and Transportation Commission

January, 1998

ACKNOWLEDGMENTS

This report was prepared for the Commission by the telecommunications section of the Washington Utilities and Transportation Commission. Staff for the Washington Independent Telephone Association, AT&T, GTE, MCI, PTI, SPRINT/United, TRACER, U S WEST and the Public Counsel Section of the Office of Attorney General all participated in the process which led to this report. Pioneer Telephone Company, St. John Co-operative Telephone and Telegraph Company and U S WEST permitted staff to tour their facilities as part of the preparation of this report. The participation and assistance of these companies are appreciated by the Commission.

Members of the public also participated. In particular, the Commission appreciates the time given by the fifty members of the public who attended our public meeting in Coulee Dam.

The principal author of the report was Bob Shirley; his work was completed with the assistance of the entire telecommunications section under the direction of Glenn Blackmon, Assistant Director for Telecommunications. Their work and the support provided by other Commission staff are gratefully acknowledged.

Copies of this report are available from the WUTC Records Center, (360) 664-1234.

TABLE OF CONTENTS

Executive Summary	1
Summary Recommendations	6
Introduction	11
The Federal Telecommunications Act of 1996	15
Definition of Basic Services	25
Analysis of Potential Telecommunications Carriers	34
An Analysis of Cost Methodologies for Determining Universal Service Funding	40
Options for Generating and Disbursing Universal Service Funding	50
Appendix A: Public Interest Pay Phones	82

EXECUTIVE SUMMARY

Preserving and Advancing Universal Service in a Competitive Environment

Washington has a history of preserving and advancing universal telecommunications service. Approximately 97 percent of all Washington households have telephone service. The purpose of this report is to inform the Legislature about the manner in which universal service works today; what changes are needed, including statutory changes, in order to continue universal service as monopoly telephone companies are introduced to competition; and to make specific recommendations for policies which should be adopted to maintain and advance universal service in the new, competitive environment of telecommunications.

The Report

This report is in response to 1997 legislation asking the Washington Utilities and Transportation Commission (WUTC) to inform the legislature on several key issues related to universal telecommunications service. The report was prepared with comments from industry representatives and from other interested parties. Staff visited telephone company facilities, including facilities in eastern Washington. The commissioners held a public hearing on basic telecommunications services and universal service in Coulee Dam. The recommendations in the report are those of the commission; there is little or no consensus on how to proceed among the many different types of

telecommunications companies, their customers and other interested parties.

Universal Telecommunications Service

Universal telecommunications service has been a public policy in Washington State, and throughout the nation, for more than sixty years. The goal is to make access to the public telephone network available to all citizens at affordable prices. Washington State, with 97 percent of residents with telephone service, has, arguably, achieved universal service. It has done so while maintaining affordability. The cost of local, basic service is between \$10.00 and \$20.00 per month. With 97 percent participation, it is reasonable to assume that the basic rates are affordable.

Competition in the Local Telephone Market and Its Benefits

Congress has acted to open up local telephone markets to competition. A major purpose of the Telecommunications Act of 1996 (TCA) is to open up local markets to competition and, once this is accomplished, to let the former Bell operating companies into the long-distance market from which they have been excluded since the divestiture of AT&T in the early 1980's.

The benefits of competition are well known. Customers will have more choices and will be more likely to receive the services they want. Competitors will continue to up-grade their infrastructure in order to provide new and better quality services. Prices will fall if margins have been excessive. Carriers will compete on

quality of service as well as price, giving consumers more for their money.

Aid to Rural Development

An effective program of universal service which spurs telecommunications competition in rural areas will aid rural development efforts. Modern businesses need modern telecommunications technology. By supporting telecommunications service in high-cost areas, a universal service program will bring new technology and a diversity of services to rural areas. This can be achieved at the same time the fundamental purpose of a universal service program can be met--assuring access to the public telephone network at an affordable price.

Universal Service, Subsidies and Competition

Universal service has depended on subsidies to maintain affordability. It cost more than \$20.00 per month to provide basic service in many areas of Washington State. In some very remote areas, the actual cost of providing service can be \$350.00 per month--an amount that is not affordable. In order to provide service to a high-cost location at an affordable price, it is necessary to support that service with money from a source other than the customer's \$20.00 per month payment. In Washington, we have used average pricing for decades to support the high-cost customer. Monopoly telecommunications providers have been permitted to charge an above-cost price in dense, urban areas in order to provide sufficient revenue to permit charging only the same average (and affordable) price to their customers in high-cost locations. In other circumstances, monopoly providers have been

permitted to charge other companies much higher than cost charges for routing telephone traffic over their lines. These charges, known as access charges, provide substantial revenue to small telephone companies that serve many high-cost customers. This revenue, along with other support, makes it possible to keep the basic monthly rate at an affordable level--between \$10.00 and \$20.00 dollars--even when the average cost of providing the basic monthly service may be \$40.00 to \$80.00 per month.

Competition, if it is to be fair and even, cannot work when one company has the benefit of subsidies and another company does not. A new competitor cannot expect to sign up customers if it has to charge \$50.00 per month for basic service while the incumbent, with a large base of low-cost customers in the city can still charge its rural customers only \$20.00 for service. The same incumbent with the advantage in the country, however, will be at a disadvantage in the city if it has to charge all of its customers in urban areas more than the cost of service in order to support the customers in rural areas. A new competitor in the city can price basic monthly service lower than the incumbent who must charge a little extra in order to keep the basic charge affordable for rural customers. Competition cannot be fair where there are financial supports available to one company and not to another.

Achieving Fair Competition

The means to achieving fair competition is to replace the system of hidden subsidies to one of specific, predictable and sufficient supports for universal

service. Support to a few companies through price averaging or excess access revenue would have to end and be replaced by a universal service fund from which any company can draw based upon the number of high-cost customer locations it serves. The amount available for serving a particular high-cost customer would have to be the same no matter which company the customer chooses. If the support is available to any company willing to serve a customer in a high-cost location, and if it is sufficient when combined with customer revenue to cover the carrier's cost, then carriers can compete to provide local telephone service in rural, high-cost locations.

A New Universal Service Program with No New Costs

Universal service is provided in Washington today through a variety of implicit, or hidden, supports. A new universal service program can be established without increasing costs; payments which were provided through the old mechanisms can be directed to companies which serve high-cost customer locations through the new fund. A competitively and technologically neutral approach can be taken to build the fund and to govern disbursements from it.

Legislative Action

Under state statute and decisional law, the WUTC does not have authority to assess telephone companies for contributions to a universal service fund, the money from which would be returned to telephone companies which serve high-cost customer locations. In order to provide universal service and have competition in the local

telephone market, it will be necessary to pass legislation which gives the WUTC the necessary authority to develop a universal service fund. The commission has the authority to abandon the implicit supports which would be replaced by a specific, predictable and sufficient universal service fund.



Report Recommendations and Legislative Action

The following recommendations appear in the report. They respond to specific issues identified in the legislation which required this report. After each recommendation, any legislative action which is needed is identified.

1. **Recommendation:** Washington should adopt the list of Federal Communications Commission basic services. This recommendation responds to the legislature's request for a recommended definition of basic services. The basic services list adopted by the FCC corresponds to what is the standard, although not specifically defined up to this point, for basic services in Washington. Adopting this set of services will not lead to any reduction in present customer service, nor will it require increased costs on the part of telephone companies.

Legislative Action: The WUTC has the authority under RCW 80.36.140 to carry out this recommendation.